

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

GARY L. SMITH,)
)
Plaintiff,)
)
vs.) Case No. 4:03-CV-1067 RWS
)
MOLLY LANCASTER, et al.,)
)
Defendants.)

**ORDER GRANTING LEAVE TO PROCEED IN FORMA PAUPERIS ON APPEAL AND
ASSESSING AN INITIAL PARTIAL APPELLATE FILING FEE**

This matter is before the Court on plaintiff Gary Smith's (register no. #52962-019) motion to proceed in forma pauperis on appeal [Doc. #74].

28 U.S.C. § 1915 (a)

Title 28 U.S.C. 28 U.S.C. § 1915(a)(1), (2) requires a prisoner seeking leave to appeal in forma pauperis to submit an affidavit of indigency and a certified copy of his prison account statement for the six month period immediately preceding the filing of the notice of appeal. Further, § 1915(b)(1) requires a prisoner seeking leave to proceed on appeal in forma pauperis to pay the full amount of the filing fee. If the prisoner has insufficient funds in his prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account; or (2) the average monthly balance in the prisoner's account for the prior six month period. *See* 28 U.S.C. § 1915(b)(1). After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. *See* 28 U.S.C. § 1915(b)(2). The agency having custody of the prisoner will forward these monthly payments to the

Clerk of Court each time the amount in the prisoner's account exceeds \$10, until the filing fee is fully paid.

Discussion

A review of plaintiff's account statement indicates an average monthly deposit of \$25.27, and an average monthly account balance of \$2.77. Plaintiff has insufficient funds to pay the entire \$255.00 filing and docketing fees for an appeal at this time. Accordingly, the Court will assess an initial partial filing fee of \$5.05, which is 20 percent of plaintiff's average monthly deposit.

In accordance with the foregoing,

IT IS HEREBY ORDERED that plaintiff's motion for leave to proceed in forma pauperis on appeal [Doc. #74] is **GRANTED**.

IT IS FURTHER ORDERED that plaintiff shall pay an initial partial filing fee of \$5.05 towards the \$255.00 filing and docketing fees for an appeal within thirty (30) days from the date of this order. Plaintiff is instructed to make his remittance payable to "Clerk, United States District Court," and to include upon it: (1) his name; (2) his prison identification number; (3) the case number; and (4) that the remittance is for the appeal of the instant action.

Dated this 20th day of May, 2005.



Suzanne S. Sigma
UNITED STATES DISTRICT JUDGE